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INDIANA UTILITY REGULATORY COMMISSION
302 W. WASHINGTON STREET, ROOM E306

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April 11, 1996

VIA FEDERAL EXPRESS
William F. Canton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Secretary Canton:

Enclosed are an original and six copies of the comments of the Staff of the Indiana Utility Regulatory Commission in response to the Notice of Proposed Rulemaking in the above-captioned docket. Copies of the comments have also been mailed to the Service List and the International Transcription Service as directed in the Notice.

Also, please find enclosed an additional copy and self-addressed return envelope, to be date-stamped received and returned.

If you have any questions, please call me at 317-232-2737.

Sincerely,

Robert C. Glazier
Director of Utilities

Enclosures

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IN THE MATTER OF
FEDERAL-STATE JOINT BOARD
ON UNIVERSAL SERVICE
CC DOCKET NO. 96-45

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Indiana Utility Regulatory Commission
Indiana Government Center South
302 West Washington, Suite E306
Indianapolis, Indiana 46204

Resectfully Submitted:

Robert C. Glazier
Director of Utilities

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION DOCKET FILE COPY ORIGINAL

WASHINGTON, D.C. 20554

In The Matter of	)	
	)	FCC 96-93
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

COMMENTS OF THE
STAFF OF THE INDIANA UTILITY REGULATORY COMMISSION

I. INTRODUCTION

The Staff of the Indiana Utility Regulatory Commission ("IURC Staff") hereby submits its comments in response to the Federal Communications Commission (FCC) Notice of Proposed Rulemaking ("Notice") issued on March 8, 1996.[1] The Notice indicates that the instant rulemaking was initiated to:

> (1) define the services that will be supported by Federal universal service support mechanisms; (2) define those support mechanisms; and (3) otherwise recommend changes to the [FCC's] regulations to implement the universal service directives of the 1996 Act.[2]

These comments contain IURC Staff responses to several of the Notice questions, including the definition of services that should be eligible for universal service support, administration of the fund, and how contributions to the fund should be calculated. However, IURC Staff comments focus primarily on the need to

[1] In re the Matter of Federal-State Joint Board on Universal Service, CC Docket 96-45, Adopted March 8, 1996.

[2] Notice, at 3 n. 3, citing S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 131 (1996).

calculate the cost of providing local exchange telephone service - and all other services that utilize the local loop, the end office switch and, in certain cases, the incumbent LECs' tandem switch(es) and/or local transport facilities - as a prerequisite to any further attempts to allocate or recover those costs arbitrarily. IURC Staff is concerned that some of the FCC's proposals appear to allocate costs exclusively to local exchange customers certain costs that are, in fact, shared between many different services and customer classes. The IURC Staff believes that it would be premature for the FCC to change the present allocation methodology without resolving the costing and pricing questions surrounding these issues.

II. DISCUSSION

A. UNIVERSAL SERVICE PACKAGE OF SERVICES

The FCC seeks comment about the collection of telecommunications services that should be designated 'core' services, eligible for universal service support. The list of services that are in the universal service package of services should specifically meet the statutory criteria of the Telecommunications Act of 1996[3] (1996 Act), while furthering the principles established in Section 254(b) of the Act.[4] The IURC Staff recommends, at a minimum, that the following list of basic services, capabilities, and characteristics be made available to all end-user customers:

- Single party voice grade service
- Touch-tone dialing
- Access to Telecommunications Relay Service
- Access to emergency service numbers and 911/E911 operability
- Access to operator services
- Equal access to interstate, interLATA, and intraLATA long-

[3] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. §§ 151, *et seq.*)

[4] Notice, § 17, page 12.

distance carriers
- Access to Directory Assistance
- White Pages directory
- Repair of the network to the demarcation point
- Toll limitation/blocking services
- Reasonably adequate local calling area
- White Pages listing

The IURC Staff believes the above list of services, capabilities, and characteristics is a reasonable reflection of the level of telecommunications services that consumers currently receive and is consistent with the statutory criteria of the 1996 Act. The list of services, therefore, should be used as a benchmark definition of services eligible for universal service support.

B. SUPPORT FOR LOW-INCOME CONSUMERS

The Notice requests comment about any services, technical capabilities, or features that would be of benefit to low-income consumers and that would meet one or more criteria for universal service support eligibility.[5] The IURC Staff comments, filed with the FCC in CC Docket No. 95-115[6] on September 27, 1995, expressed support for the use of toll blocking - either by itself or in conjunction with toll limitation services - as a means of keeping customers on the local network.

The IURC Staff supports provision of toll blocking services to low-income customers as a means of controlling the level of their bills. Blocking access to toll services while permitting retention of local exchange service allows customers to call local emergency services, hospitals, schools, government support agencies, crisis prevention agencies, etc., which is consistent with the IURC's

[5] Notice, § 50, at 25.

[6] In re the Matter of Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network, Released July 20, 1995.

position that the local portion of telephone service is the essential portion.[7] Toll blocking should be included in the universal service package and be made available at a discount to low-income customers wanting to control their toll usage.

In conjunction with toll blocking, the IURC approved the toll limitation plan of GTE North, Inc., "Advanced Credit Management," on March 22, 1995. This toll limitation system allows blocking of customer access to the toll network, in lieu of local service disconnection, once certain predetermined credit limits have been exceeded.[8] Customers whose toll service is blocked under this procedure are still able to place long-distance calls to emergency agency numbers. A charge for restoring service is not applicable when the customer's toll service is unblocked.

Indiana's experience with the Advance Credit Management system has been positive. While the IURC Consumer Affairs Division has received a few complaints about the initial establishment of credit limits, a cursory review suggests that the program appears to be meeting its overall objectives of decreasing the number of deposits being required of new customers, cutting the amount of uncollectibles due to excessive toll use, and reducing the number of complete disconnections of service. We recommend that the FCC consider providing for similar treatment of low-income customers who prove to have credit problems.

C. ADMINISTRATION

The FCC seeks comment on which providers of interstate telecommunications services should contribute to the federal

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[7] IURC Comments in CC Docket No. 95-115, at 2.

[8] All types of toll services are blocked under this scenario.

Universal Service Fund, how the contributions should be assessed and who should administer the Fund.[9]

The 1996 Act is broad in its description of the telecommunications providers that should contribute to the preservation and advancement of universal service. Consequently, the IURC Staff believes the intent of this broad Congressional directive would be best met by assessing the universal service contribution to providers of any interstate telecommunications service, using certain gross revenue criteria. This is similar to the way in which Telephone Relay Service (TRS) is funded. The list of carriers providing TRS funding may be useful as a starting point for determining who should pay into any revised Universal Service Fund.

Providers of any interstate telecommunications service should be assessed the universal service contribution based upon a combination of their gross interstate and intrastate revenues net of payments to other carriers. Combining interstate and intrastate revenues addresses the 'jurisdictional' problem for those providers that do not separate their revenues, and netting out the payment to other carriers insures that wholesale transactions are not double-counted. The IURC Staff also recommends that the FCC establish a benchmark, set on a percentage of average interstate and intrastate revenues, to identify and exempt those companies for which the cost of collecting the universal service contribution would exceed the contribution, itself.

The IURC Staff supports neutral third party administration of the universal service fund, but does not believe the wheel has to be reinvented in order to ensure that universal service mechanisms are administered fairly, consistently and efficiently. As administrator of the existing Universal Service Fund, the National Exchange Carrier Association (NECA) has demonstrated its

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[9] Notice, §§ 118 - 131, at 55-60.

proficiency in meeting the conditions specified in the Notice. The 1996 Act requires changes in the structure of the Universal Service Fund and its funding that the IURC Staff believes will best be accomplished administratively by using the current administrator - NECA.

D. SUBSIDY CALCULATION

The IURC Staff believes the FCC's hasty push to identify methods for determining the level of support that may be needed to ensure universal service is "putting the cart before the horse." Before attempting to calculate the value of any "subsidies" which may or may not exist, it will be necessary to perform several other tasks first, including, but not necessarily limited to, the following:

1. Ascertaining the existence of "subsidies" within local rates. Assuming for the sake of argument that local rates do contain some "subsidies," the FCC must still determine whether such "subsidies" occur *within* customer classes (e.g., low-volume local customers subsidizing high-volume customers - especially in a State which does not permit local measured service), *between* customer classes (e.g., captive monopoly [or near-monopoly] local residential customers subsidizing large business and industrial customers who may have more choices), or both.

2. Calculating the cost of providing local telephone service. The arguments that "a loop is a loop is a loop" and "a line is a line is a line," suggest that a LEC incurs the same costs whether it is providing Centrex service, single-line business, multi-line business, or basic local residential telephone service.

To the extent that those arguments are true, and to the extent that any subsidies exist *between* customer classes, it may be reasonable to inquire whether lower-priced "varieties" of local service are being "subsidized" by higher-priced varieties. It would be necessary for regulators to consider LECs individually, in addition to any aggregate analysis which might be undertaken.

3. Calculating the cost of providing other LEC services. Cost studies should be performed on other services which utilize the local loop, the LEC switch (both local and tandem), and/or local transport facilities, and these other services should receive an equitable allocation of the joint and common costs.[10]

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[10] Note: The carrier common line charge (CCLC) is designed to recover loop costs, plus several miscellaneous costs (*e.g.*, certain costs associated with payphones) and should not be used to recover costs associated with either local switching, tandem switching, or local transport. However, the tariffed prices for all four of these elements can include "joint and common costs" under certain circumstances. As each of these elements becomes more competitive (*i.e.*, as non-incumbent LEC carriers have more alternative suppliers for these elements and as the LECs lose market share for one or more of these elements), incumbent LECs may have an incentive to subsidize that competitive element(s) from less competitive elements, thereby recovering fewer of the joint and common/shared costs from the more competitive element(s) and more from the less competitive element(s)). Federal and state regulators should consider the possibility of this type of cost-shifting behavior in conjunction with any unbundling by the incumbent LECs of the components of local exchange service and/or "rebalancing" of their rates. While this type of behavior is rational, it is not in the public interest in a marketplace that is characterized by both monopolistic and partially competitive services. In a perfectly competitive marketplace, it could not be sustained over the long run; however, in imperfectly competitively markets, this type of behavior might be sustainable for a period of years. This would tend to artificially inflate the "cost" of the local loop (*i.e.*, the rate (currently tariffed) the LEC charges other providers for the use of its facilities and equipment). To the extent - and only to the extent - that the interstate CCLC is subsidizing the interstate portion of local switching, local transport, and/or tandem switching, the IURC Staff would support the elimination of that portion of the interstate CCLC which was attributable to the subsidization.

This minimum set of tasks should be done as a prerequisite to making any changes to the existing cost allocation or recovery methodologies and mechanisms. IURC Staff is concerned that some of the FCC's proposals appear to allocate exclusively to local exchange customers certain costs that are, in fact, shared between many different types of services and customers. The IURC Staff believes that it would be premature for the FCC to change the present allocation and recovery methodologies and mechanisms without first resolving costing and pricing questions surrounding **all** of the services that use the local loop, the end office switch, and, in certain cases, the incumbent LECs' tandem switches and/or local transport facilities.

Further, the IURC Staff does not believe any of the proxy models proposed in the Notice for determining costs for financial assistance eligibility yield results that are any more reliable than or superior to the current cost recovery mechanism. The proposed proxy models fail to recognize the costs of providing local exchange service in <u>specific areas</u> - a significant flaw - which means that further investigation and review is needed before <u>any</u> proxy model can or should be adopted. In the long-term, it may be possible for the FCC to develop a proxy model which recognizes and includes specific local costing elements; however, in the short term, the IURC Staff recommends maintaining the current system of using cost data reported by the existing local exchange carriers.

E. <u>SUBSCRIBER LINE CHARGE AND CARRIER COMMON LINE CHARGE</u>

The Notice seeks comment on whether to continue the existing "subsidy" so as to preserve reduced end user common line charges, or to eliminate or reduce the subscriber loop portion of the interstate CCL charge and, instead, permit LECs to recover these costs from end users.[11] The IURC Staff believes that any effort to

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[11] Notice, § 114, page 52.

eliminate the interstate Carrier Common Line Charge (CCLC) is likely to infringe upon the States' authority to enact regulations which preserve universal service, protect consumers, etc., pursuant to § 253(b) of the Act:

> (b) STATE REGULATORY AUTHORITY. - Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers [emphasis added].

Further, the IURC Staff asserts that the FCC's proposals are not required under § 254(k) of the Act and may be inconsistent with that language:

> (k) SUBSIDY OF COMPETITIVE SERVICES PROHIBITED. - A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The Commission [FCC], with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services [emphasis added].

It should be noted that §253(b), when coupled with §254(k), appears to give State Commissions fairly wide latitude in developing state-specific policies and methodologies for recovering non-traffic sensitive/joint and common costs from both end user (retail) customers and from the various carriers and providers that utilize the LECs' facilities and equipment and/or who purchase telecommunications services from the LECs. Similarly, §254(k) appears to give the FCC at least three options: (1) maintaining the interstate Subscriber Line Charge (SLC) at its present level; (2) removing some of the true "subsidies" from the interstate CCLC and recovering them through a broad-based, competitively neutral mechanism; and (3) reducing the interstate CCLC and Residual Interconnection Charge (RIC) by broadening the universe of providers and services from which those charges are recovered to include all providers and services which utilize or benefit from the local loop and (in some cases) local switching, local transport, or tandem switching. If interexchange carriers (IXCs), local exchange carriers (LECs), and other such purchasers were required to pass through those reductions to **all** of their retail and wholesale customers, including low-volume retail customers of basic services (*e.g.*, MTS (non-optional calling plan)) services, it is possible that the resulting stimulation of demand for toll and other services which utilize LEC facilities and services could increase LEC revenue sufficiently to allow even larger decreases, which, in turn, could stimulate demand even further, etc. Again, this assumes that IXCs, LECs and other carriers utilizing LEC facilities and services would continue to pass those decreases through to their retail and wholesale customers.

Notwithstanding any possible stimulation of demand due to elasticity effects, the proposals contained in the Notice for recovery of interstate non-traffic sensitive/joint and common costs share some of the characteristics of an "unfunded mandate." The failure to acknowledge the impact these proposals may have on those States that allow or require LECs to "mirror" interstate access charges in the state jurisdiction is especially troubling to the IURC Staff. Any decrease in the interstate CCLC would result in similar reductions in the intrastate CCLC. Any net decrease in LEC revenues which occurred due to one or both of these decreases in CCLC levels would put some amount of upward pressure on local rates, the intrastate End User Charge, or both. Those States which mirror interstate CCLC levels and which have not authorized intrastate End User Charges might well have no viable options other than to authorize increases in the LECs' local rates (again, this assumes a net decrease in LEC revenues due to reductions in one or both CCLC levels).

The mandate in §254(k) to establish cost allocation rules, accounting safeguards, and guidelines "to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services" is extremely subjective. This subjectivity is caused, in part, by the lack of definitions for many of the key terms - *e.g.*, "reasonable share" of joint and common costs; "subsidize"; "services that are not competitive"; "services that are subject to competition"; etc. These undefined terms raise several questions - including, but not limited to the following: Who will establish these definitions? What role, if any, will the States have in defining these terms for **intrastate** services and elements? For interstate services and elements, will the FCC use its "access survey" or some other data collection instrument(s) to measure the existence and/or extent of "competition"? Of "subsidization"?

The distinction between "services that are not competitive" and "services that are subject to competition" is critical. Both federal and state regulators may find it difficult - if not impossible - to enforce the intent of Congress: to prevent the subsidization of competitive services by non-competitive ones. The LECs (both incumbents and new entrants) and other types of telecommunications carriers may argue that *all* of their services, including basic local residential service, are "subject to competition." Since § 254(k) does not prohibit subsidies among two (or more) services that are both (all) "subject to competition," under this scenario of "subsidization" among services that are *within* the same category, a LEC or other telecommunications carrier would apparently be permitted to engage in behavior that would ordinarily be considered "cross subsidization" - *e.g.*, shifting joint and common costs to basic local residential customers.

Because there are no penalties for noncompliance, and because this pportion of the federal statute does not establish for either the

FCC or State Commissions any enforcement mechanisms, neither the FCC nor the State Commissions should expect this section of the Act to provide realistic or effective protection for basic residential local consumers. Consequently, this Section cannot reliably serve as a *quid pro quo* to justify any form of relaxed regulation.

III. CONCLUSION

The IURC Staff believes the 1996 Act emphasizes the need for the FCC and state commissions to work cooperatively to establish long-term goals that further universal service. In order to implement the universal service criteria specified in the 1996 Act, the FCC and state commissions must implement universal service plans and rules that are complementary and that address issues such as a minimum universal service package of services, support for low-income consumers, and determination of accurate costs and cost allocation. The IURC Staff, therefore, urges the FCC to begin the transition to a competitive local exchange market and subsequent modification of the universal service mechanism by retaining the current funding mechanisms, while initiating inquiry into the long-term universal service goals under the 1996 Act.

The IURC Staff is concerned that any proposals to eliminate or decrease the interstate CCLC are unnecessary under § 254(k) of the 1996 Act and may be inconsistent with that language. The IURC Staff believes that any such proposals may take on the characteristics of an "unfunded mandate." Finally, the IURC recommends at least three steps that should precede the implementation of any such proposals:

(1) ascertaining the existence of "subsidies" within local rates;
(2) calculating the cost of providing local telephone service; and
(3) calculating the cost of providing other LEC services.